

REFERENCE TITLE: **homeowners' associations; audits**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2306

Introduced by
Representative Gray C

AN ACT

AMENDING SECTIONS 33-1243 AND 33-1810, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1243, Arizona Revised Statutes, is amended to
3 read:

4 33-1243. Board of directors and officers: conflict: powers:
5 limitations: removal: annual audit: applicability

6 A. Except as provided in the declaration, the bylaws, subsection B or
7 other provisions of this chapter, the board of directors may act in all
8 instances on behalf of the association.

9 B. The board of directors shall not act on behalf of the association
10 to amend the declaration, terminate the condominium, elect members of the
11 board of directors or determine the qualifications, powers and duties or
12 terms of office of board of directors members. The board of directors may
13 fill vacancies in its membership for the unexpired portion of any term.

14 C. If any contract, decision or other action for compensation taken by
15 or on behalf of the board of directors would benefit any member of the board
16 of directors or any person who is a parent, grandparent, spouse, child or
17 sibling of a member of the board of directors or a parent or spouse of any of
18 those persons, that member of the board of directors shall declare a conflict
19 of interest for that issue. The member shall declare the conflict in an open
20 meeting of the board before the board discusses or takes action on that issue
21 and that member may then vote on that issue. Any contract entered into in
22 violation of this subsection is void and unenforceable.

23 D. Except as provided in the declaration, within thirty days after
24 adoption of any proposed budget for the condominium, the board of directors
25 shall provide a summary of the budget to all the unit owners. Unless the
26 board of directors is expressly authorized in the declaration to adopt and
27 amend budgets from time to time, any budget or amendment shall be ratified by
28 the unit owners in accordance with the procedures set forth in this
29 subsection. If ratification is required, the board of directors shall set a
30 date for a meeting of the unit owners to consider ratification of the budget
31 not fewer than fourteen nor more than thirty days after mailing of the
32 summary. Unless at that meeting a majority of all the unit owners or any
33 larger vote specified in the declaration rejects the budget, the budget is
34 ratified, whether or not a quorum is present. If the proposed budget is
35 rejected, the periodic budget last ratified by the unit owners shall be
36 continued until such time as the unit owners ratify a subsequent budget
37 proposed by the board of directors.

38 E. The declaration may provide for a period of declarant control of
39 the association, during which period a declarant or persons designated by the
40 declarant may appoint and remove the officers and members of the board of
41 directors. Regardless of the period provided in the declaration, a period of
42 declarant control terminates no later than the earlier of:

43 1. Ninety days after conveyance of seventy-five per cent of the units
44 which may be created to unit owners other than a declarant.

1 2. Four years after all declarants have ceased to offer units for sale
2 in the ordinary course of business.

3 F. A declarant may voluntarily surrender the right to appoint and
4 remove officers and members of the board of directors before
5 termination of the period prescribed in subsection E, but in that event the
6 declarant may require, for the duration of the period of declarant control,
7 that specified actions of the association or board of directors, as described
8 in a recorded instrument executed by the declarant, be approved by the
9 declarant before they become effective.

10 G. Not later than the termination of any period of declarant control
11 the unit owners shall elect a board of directors of at least three members,
12 at least a majority of whom must be unit owners. The board of directors
13 shall elect the officers. The board members and officers shall take office
14 upon election.

15 H. Notwithstanding any provision of the declaration or bylaws to the
16 contrary, the unit owners, by a majority vote of members entitled to vote and
17 voting on the matter at a meeting of the members called pursuant to this
18 section at which a quorum is present, may remove any member of the board of
19 directors with or without cause, other than a member appointed by the
20 declarant. For purposes of calling for removal of a member of the board of
21 directors, other than a member appointed by the declarant, the following
22 apply:

23 1. In an association with one thousand or fewer members, on receipt of
24 a petition that calls for removal of a member of the board of directors and
25 that is signed by the number of persons who are entitled to cast at least
26 twenty-five per cent of the votes in the association or one hundred votes in
27 the association, whichever is less, the board shall call and provide written
28 notice of a special meeting of the association as prescribed by section
29 33-1248, subsection B.

30 2. Notwithstanding section 33-1248, subsection B, in an association
31 with more than one thousand members, on receipt of a petition that calls for
32 removal of a member of the board of directors and that is signed by the
33 number of persons who are entitled to cast at least ten per cent of the votes
34 in the association or one thousand votes in the association, whichever is
35 less, the board shall call and provide written notice of a special meeting of
36 the association. The board shall provide written notice of a special meeting
37 as prescribed by section 33-1248, subsection B.

38 3. The special meeting shall be called, noticed and held within thirty
39 days after receipt of the petition.

40 4. For purposes of a special meeting called pursuant to this
41 subsection, a quorum is present if the number of owners to whom at least
42 twenty per cent of the votes or one thousand votes, whichever is less, are
43 allocated is present at the meeting in person or as otherwise permitted by
44 law.

1 5. If a civil action is filed regarding the removal of a board member,
2 the prevailing party in the civil action shall be awarded its reasonable
3 attorney fees and costs.

4 6. The board of directors shall retain all documents and other records
5 relating to the proposed removal of the member of the board of directors for
6 at least one year after the date of the special meeting and shall permit
7 members to inspect those documents and records pursuant to section 33-1258.

8 7. A petition that calls for the removal of the same member of the
9 board of directors shall not be submitted more than once during each term of
10 office for that member.

11 I. For an association in which board members are elected from
12 separately designated voting districts, a member of the board of directors,
13 other than a member appointed by the declarant, may be removed only by a vote
14 of the members from that voting district, and only the members from that
15 voting district are eligible to vote on the matter or be counted for purposes
16 of determining a quorum.

17 J. Unless any provision in the condominium documents requires an
18 annual audit by a certified public accountant, the board of directors shall
19 provide for an annual financial audit, review or compilation of the
20 association **TO BE PERFORMED BY ANY PERSON SELECTED BY THE BOARD**. The audit,
21 review or compilation shall be completed no later than one hundred eighty
22 days after the end of the association's fiscal year and shall be made
23 available upon request to the unit owners within thirty days after its
24 completion.

25 K. This section does not apply to timeshare plans or associations, or
26 the period of declarant control under timeshare instruments, that are subject
27 to chapter 20 of this title.

28 Sec. 2. Section 33-1810, Arizona Revised Statutes, is amended to read:
29 33-1810. Board of directors: annual financial audit, review or
30 compilation

31 Unless any provision in the planned community documents requires an
32 annual audit by a certified public accountant, the board of directors shall
33 provide for an annual financial audit, review or compilation of the
34 association **TO BE PERFORMED BY ANY PERSON SELECTED BY THE BOARD**. The audit,
35 review or compilation shall be completed no later than one hundred eighty
36 days after the end of the association's fiscal year and shall be made
37 available upon request to the members within thirty days after its
38 completion.